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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

TODD JOSEPH SOUSA,

Defendant and Appellant.

H046120

(Santa Clara County

Super. Ct. No. C1892724)

Defendant Todd Joseph Sousa pleaded no contest to burglary of a vehicle. The trial court granted a three-year term of probation with 90 days in county jail. The court also imposed three probation conditions, among others, requiring Sousa to undergo chemical tests, abstain from alcohol, and complete a substance abuse program.

Sousa challenges the imposition of those three probation conditions under the standards set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). He argues the conditions had no nexus to the offense; they relate to conduct that is not criminal; and they are not reasonably related to future criminality.

For the reasons below, we conclude the trial court did not abuse its discretion by imposing the challenged conditions. Accordingly, we will affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural Background

The prosecution charged Sousa with burglary of a vehicle (Pen. Code, § 460, subd. (b)). Sousa pleaded no contest to that charge as part of a plea agreement. In accord with the agreement, the trial court suspended imposition of sentence and granted a three-year term of probation with 90 days in county jail.

The probation report recommended three probation conditions at issue here: (1) that Sousa submit to chemical tests; (2) that Sousa shall not knowingly possess or knowingly consume alcohol or go to places where he knows alcohol is the primary item of sale; and (3) that Sousa shall enter and complete a substance abuse program. The report set forth a basis for the recommended conditions as follows: “As the defendant has a DUI conviction from Napa County (2014), an arrest for being Drunk in Public from Santa Clara County (2018), and as multiple neighbors in the police report indicated they smelled alcohol on the defendant and believed him to be under the influence of drugs or medication, in an abundance of caution, and to ensure the defendant has a positive experience on supervision and to deter further criminal conduct, it is respectfully recommended substance abuse conditions be ordered.”

At sentencing, Sousa objected to these conditions on the ground that the conditions had no nexus to the current offense because it did not involve drugs or alcohol. The trial court found a sufficient nexus in the fact that Sousa had previously been arrested under Penal Code section 647, subdivision (f) (drunk in public), and he had a prior conviction for driving under the influence of drugs or medication. Accordingly, the court overruled Sousa’s objections and imposed the conditions as recommended.

B. Facts of the Offense¹

The victim stated his car was broken into in the evening. The passenger window was smashed with a rock, and the repair cost \$160.

II. DISCUSSION

Sousa contends the trial court erred by imposing the challenged probation conditions under the standards set forth in *Lent, supra*, 15 Cal.3d 481. He argues the conditions had no nexus to the offense for which he was convicted; they relate to conduct which is not in itself criminal; and they forbid or require conduct that is unrelated to future criminality. The Attorney General contends the conditions were properly imposed based on Sousa's alcohol use and prior conviction for driving under the influence.

A. Legal Principles

Generally, a probation condition will not be held invalid unless (1) it has no relationship to the crime of which the offender was convicted; (2) it relates to conduct which is not in itself criminal; and (3) it requires or forbids conduct that is not reasonably related to future criminality. (*Lent, supra*, 15 Cal.3d at p. 486.) “ ‘[The] test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.’ ” (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723.) Unless the probation condition impinges on some constitutionally protected conduct, we review the imposition of the condition under the abuse of discretion standard of review. (*Ibid.*)

B. Imposition of the Probation Conditions Was Not an Abuse of Discretion

As to the first prong of *Lent*—whether the conditions have any relationship to the current offense—the parties dispute the relevant facts. The Attorney General cites the probation report's statement that “multiple neighbors in the police report indicated they smelled alcohol on the defendant and believed him to be under the influence of drugs or medication.” Sousa contends this statement concerned his past conviction for being

¹ The statement of facts is based on information set forth in the probation report.

drunk in public, not the current car burglary. For this proposition, Sousa cites his trial counsel's statement at sentencing that "this case does not involve any kind of drugs or alcohol." But the unsworn statements of counsel are not evidence. (*In re Zeth S.* (2003) 31 Cal.4th 396, 414, fn. 11.)

Putting aside counsel's statements, we find the record ambiguous on this point. Regardless, even assuming Sousa is correct, the trial court did not rely on the facts of the current offense as a basis for imposing the probation conditions. The court found Sousa had suffered a prior conviction for driving under the influence and that "he was under the influence of drugs and/or medication," apparently referencing the prior conviction. The court also relied on Sousa's prior arrest for being drunk in public. The court cited those two factual findings as providing a sufficient nexus to impose the conditions in the current case.

We perceive no abuse of discretion in this ruling. Sousa's past use of alcohol or drugs in connection with his criminal history supports the conclusion that the conditions are "reasonably related to future criminality" under the third prong of *Lent*. (See *People v. Malago* (2017) 8 Cal.App.5th 1301, 1307 [past use of drugs and alcohol supported imposition of probation conditions]; *People v. Beal* (1997) 60 Cal.App.4th 84, 87 [alcohol use may lead to future criminality]; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 710 [the Legislature has found that alcohol and drug abuse are precursors of serious criminality, such that urine testing is reasonably related to future criminality]; *People v. Balestra* (1999) 76 Cal.App.4th 57, 68 [rejecting challenge to drug and alcohol testing].)

Accordingly, we conclude this claim is without merit. We will affirm the judgment.

III. DISPOSITION

The judgment is affirmed.

Greenwood, P.J.

WE CONCUR:

Bamattre-Manoukian, J.

Danner, J.